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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,330	11/25/2003	David J. Twitchell	TWITCHELL.UTL	6513
21999	7590	05/04/2005	EXAMINER	
KIRTON AND MCCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE P O BOX 45120 SALT LAKE CITY, UT 84145-0120			WEBB, SARAH K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/722,330	TWITCHELL ET AL.	
	Examiner	Art Unit	
	Sarah K Webb	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 13-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments, see page 7, filed 1/31/05, with respect to the 112 1<sup>st</sup> paragraph rejection of claim 19, have been fully considered and are persuasive. The 112 rejection of claim 19 has been withdrawn.
2. Applicant's arguments with respect to the 103 rejections of claims 1,2,9 and 10 under Kawada and Chang have been considered but are moot in view of the new ground(s) of rejection.
3. Applicant's arguments with respect to Rauh being are irrelevant to the new rejections. Rauh is only used to teach a ridge on the edge of a cup, so it is irrelevant that the Rauh device does not utilize vacuum pressure.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-10,13-20, 21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,730,098 to Chang in view of US Patent No. 3,906,940 to Kawada and further in view of US Patent Application Publication No. 2003/0097139 A1 (Karasiuk).

Chang discloses a hand-held apparatus in Figures 6-8 that includes a motor (51') enclosed within a housing. One end of the housing includes a suction cup (32') with an exfoliation tip (21') located within the vacuum space of the cup (column 6, lines 6-19). A tube (42') is connected between the vacuum space of the cup and the suction pump (41') (column 6, lines 57-67). Power is supplied to the motor (51') to rotate a shaft (52') connected to the abrading element (21') (column 7, lines 1-14). The

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power supply is also connected to a switch (53') on the housing and a suction pump (41'). The exfoliation tip has an impregnated surface (column 4, lines 14-29) that can be described as a pore cleansing, buffing, or sanding tip.

Chang fails to locate the vacuum pump within the housing. Kawada discloses another hand-held device with a motor encased in a housing, a source of vacuum, a rotating disk for treating skin. Kawada teaches that the vacuum generation source can be contained in the housing (column 2, line 53 through column 3) so the device is more compact and easy to use (column 4, lines 14-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the device of Chang to enclose the vacuum source in the housing, as taught by Kawada, in order to provide a more compact and user friendly device.

The modified Chang device fails to configure the exfoliation tip so that it is offset within the vacuum space of the suction cup and offset from the end of the suction cup. Karasiuk discloses another handheld microdermabrasion device that includes a vacuum source to remove debris from the skin surface. Karasiuk configures the abrading tip (24) to be within the vacuum space of the suction cup (20) and offset from the end of the cup so that the targeted area of skin is pulled up into the vacuum space of the cup and into contact with the abrading tip [0054]. Karasiuk teaches that this configuration provides for pre and post treatment of skin inside the cup but not in contact with the abrading tip, which reduces trauma, streaking, and redness to the skin [0055]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the exfoliation tip and suction cup of the modified Chang device so that the tip is offset within the vacuum space of the suction cup, as Karasiuk teaches that this configuration reduces trauma to treated skin.

Regarding claims 3-5, the modified Chang device also fails to include a cylindrical wall at the end of the housing so that the suction cup fits over the cylindrical wall and an o-ring seal. The suction cup (20) of Karasiuk fits over a cylindrical wall at the end of base (18) and o-rings (18a) form a pressure tight seal [0043]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to configure connection between the housing and suction cup of the modified Chang device as taught by Karasiuk, as this forms a pressure tight seal.

Regarding claim 7, Karasiuk also teaches that a vacuum tube can be provided with an inline filter (60) as added assurance that no debris will be transported into vacuum source [0047-0048].

Regarding claim 8, Karasiuk teaches that a vacuum line can include a breather line (76), or vent, so that the amount of air allowed through vacuum tube can be adjusted [0050]. Regarding claims 16-20, the tip (21) provided with the Chang device could function as a buffer, sander, or vibrating tip.

Karasiuk also teaches that various treatment tips can be used with the device [0051]. Regarding claim 19, applicant asserts in the arguments filed 1/31/05 that it was widely known in the art at the time the invention was made to attach pumice stone to other structures, and as evidenced by advertisements supplied by applicant on 1/31/05, can be used for the purpose of skin treatment.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang, Kawada, and Karasiuk, as applied to claim 13 above, and further in view of US Patent No. 6,241,739 to Waldron.

Chang, Kawada, and Karasiuk fail to disclose an abrasive edge on a suction cup. Waldron discloses another microdermabrasion device. Waldron teaches that the

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edge of the suction cup itself can be abrasive, as shown in Figure 14A, which aids in the exfoliation process. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an abrasive suction cup in the modified Chang kit, as Waldron teaches that this type of cup can also be advantageous during a microdermabrasion process.

6. Claims 11,22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Kawada and Karasiuk, as applied to claims 1 and 13 above, and further in view of US Patent No. 2,232,474 to Rauh.

The modified Chang device fails to form the suction cup with a ridge defining the opening. Rauh discloses a device with a rotating skin engaging tip (10) and a soft rubber cup (18) with a ridge defining the opening. Rauh teaches that the soft rubber cup conforms to the contours of the skin (column 3, lines 45-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a soft rubber cup with a ridge in the modified Chang kit, Rauh teaches that this type of suction cup prevents trauma by conforming to contours of the skin.

#### **Conclusion**

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

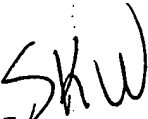
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW

4/29/05



**JULIAN W. WOO**  
**PRIMARY EXAMINER**